

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK05-83427-TJM
)	
JESSE CARDENAS, JR., and)	CH. 7
TALENA GRACE CARDENAS,)	
)	
Debtor(s).)	

ORDER

Hearing was held in Omaha, Nebraska, on June 18, 2012, regarding Fil. #14, Motion for Contempt Against Wells Fargo Financial for Violation of Discharge Provisions, filed by the debtors. The debtors appeared pro se and no appearance was made on behalf of Wells Fargo Financial.

Mr. and Mrs. Cardenas obtained a Chapter 7 discharge in 2005. Prior to filing the case, they had granted a mortgage to Wells Fargo Financial.

After they had made the final payment on the mortgage in September of 2011, they began receiving correspondence from Wells Fargo Financial concerning the possibility of foreclosure and the help that Wells Fargo Financial might be able to offer them. Then they started receiving telephone calls demanding payment of \$765.34. They received numerous statements from December of 2011 through April of 2012 demanding payment of \$730.61 in principal and various amounts of interest leaving a different payment requirement for each month.

Mr. and Mrs. Cardenas filed a motion for contempt asserting that, first, they did not owe anything to Wells Fargo Financial, and second, that the monthly statements and telephone calls were simply harassment in violation of the discharge injunction.

A hearing was scheduled and Wells Fargo Financial was notified at three different addresses. At the hearing, Mr. and Mrs. Cardenas appeared in person. No appearance was made on behalf of Wells Fargo Financial.

Mr. and Mrs. Cardenas explained that they had paid the mortgage in full in September of 2011 by payment of \$1,214.00, which was the last payment due. They also explained that they had not received a release of the mortgage and that they had not received a telephone call or a monthly statement from Wells Fargo Financial since the motion for contempt was filed and the hearing set.

Wells Fargo Financial was given the opportunity to appear in this court and explain what, if anything, Mr. and Mrs. Cardenas owed and why they owed anything in addition to the payments they had already made. Wells Fargo Financial did not take advantage of the opportunity to explain their position and the reason for their correspondence and telephone calls.

Mr. and Mrs. Cardenas explained that, in the telephone calls, the caller would never clarify why there were additional funds to be paid. Instead, they just insisted on payment.

At the hearing, the court ruled from the bench that Wells Fargo Financial was in violation of the discharge injunction so the motion for contempt would be granted. In addition, the court informed Mr. and Mrs. Cardenas that monetary sanctions in the amount of \$1,000.00 would be

assessed against Wells Fargo Financial for its intentional violation of the discharge injunction.

However, when preparing the order, the docket and the documents attached to the motion for contempt were once again reviewed. It was found that, during the bankruptcy case, the debtors reaffirmed their mortgage obligation to Wells Fargo Financial. What this means is that the discharge which was entered in favor of Mr. and Mrs. Cardenas in late 2005 did not discharge their personal obligation to Wells Fargo Financial. Therefore, none of the actions taken by Wells Fargo Financial since September of 2011 can be deemed a violation of the discharge injunction.

A further review of the documents attached to the motion for contempt shows that, at least from the time of the August 2011 statement, the Cardenases had been made aware that Wells Fargo Financial claimed the additional \$730.00. The statement indicates what the monthly payment is and then indicates the total amount still due as more than \$1,900.00.

One would think that Wells Fargo Financial, if only for public relations purposes, would have provided Mr. and Mrs. Cardenas with a written statement identifying why the additional funds are due. However, none of the collection agents who called Mr. and Mrs. Cardenas gave them such information, which led to the filing of this motion for contempt.

There is no relief that this court can give Mr. and Mrs. Cardenas in this situation. However, Wells Fargo Financial and its affiliated companies appear in this court on a regular basis. This matter should be resolved by Wells Fargo Financial as soon as possible and a release of the mortgage should be provided. If Mr. and Mrs. Cardenas actually owe \$730.00 plus interest, Wells Fargo Financial should immediately provide them with proof of such amount due.

IT IS ORDERED that the motion for contempt, Fil. #14, filed by Mr. and Mrs. Cardenas against Wells Fargo Financial, is denied.

DATED: June 19, 2012

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*Jesse Cardenas, Jr.
*Talena Grace Cardenas
Wells Fargo Financial

* Movant is responsible for giving notice to other parties if required by rule or statute.